

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 237A.12, the Department of Human Services amends Chapter 109, "Child Care Centers," and Chapter 110, "Child Development Homes," Iowa Administrative Code.

These amendments implement changes in the licensing standards for child care centers and the registration standards for child development homes as required by the Smokefree Air Act enacted by the 82nd General Assembly in 2008 Iowa Acts, House File 2212. Under this legislation, child care centers and homes are defined as a "public place," and smoking is completely prohibited. The law also requires posting of "no smoking" signs on the premises. The expected benefits from these amendments are fewer smoke-related health issues for children, child-care providers, and other family members in child development homes.

The Department of Public Health has adopted administrative rules to implement 2008 Iowa Acts, House File 2212; the rules were published in the Iowa Administrative Bulletin on July 30, 2008, as **ARC 6989B**. The Department of Public Health has an Internet Web site (www.iowasmokefreeair.gov) devoted to helping affected businesses understand the law through links to resources and examples of signage.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on July 16, 2008, as **ARC 6928B**. The Department received comments on the Notice of Intended Action from 23 persons. Six comments were related to the requirements for signage not being appropriate for private homes and vehicles, and 19 were about the state's infringement on private property rights by regulating use of the home when the child care business was not operating.

The requirements for signage and the complete ban on smoking in the facility and vehicles are contained in the legislation, so the Department has no authority to change them.

However, since the proposed amendments were published, the Department of Public Health has determined that it does not interpret outdoor play areas in child care facilities to be specifically included in the definition of "public place." Therefore, the Department of Human Services has made changes in both Item 1 and Item 2 to clarify that the complete ban on smoking applies to facilities and vehicles, based on the new legislation, but the current rules on outdoor play space are unchanged. Smoking is permitted in the outdoor play space when the child care facility is not operating.

These amendments do not provide for waivers in specified situations because the Department does not have the authority to waive statutory provisions.

The Council on Human Services adopted these amendments on September 17, 2008.

These amendments are intended to implement Iowa Code chapter 237A as amended by 2008 Iowa Acts, House File 2212, sections 12 and 13.

These amendments shall become effective on December 1, 2008.

The following amendments are adopted.

ITEM 1. Amend subrule 109.10(11) as follows:

109.10(11) Smoking. Smoking and the use of tobacco products shall be prohibited at all times in the center, ~~outdoor play area~~ and in ~~the center-operated~~ every vehicle used to transport children. Smoking and the use of tobacco products shall be prohibited in the outdoor play area during hours of operation of the center. Nonsmoking signs shall be posted at every entrance of the child care center and in every vehicle used to transport children. All signs shall include:

- a. The telephone number for reporting complaints, and
- b. The Internet address of the department of public health (www.iowasmokefreeair.gov).

ITEM 2. Amend paragraph **110.5(1)"o"** as follows:

o. Smoking and the use of tobacco products shall be prohibited at all times in ~~areas that may be used by children receiving care in the home, in the outdoor play area, and in any~~ every vehicle in which

children receiving care in the home are transported. Smoking and the use of tobacco products shall be prohibited in the outdoor play area during the home's hours of operation. Nonsmoking signs shall be posted at every entrance of the child care home and in every vehicle used to transport children. All signs shall include:

- (1) The telephone number for reporting complaints, and
- (2) The Internet address of the department of public health (www.iowasmokefreeair.gov).

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